

REMARKS

Claims 1-6 and 9-13 are pending. Claims 9 and 11-13 have been withdrawal as being directed to non-elected subject matter. No claim amendment have been made.

Restriction Requirement

The Office has requested that the Applicants clarify their traversal of the June 27, 2008 restriction requirement. In its requirement for restriction, the Office noted that if the Applicants elected Group I, claims 1-6 and 10, for prosecution at this time, that a further restriction would be made according to structures (a-1) – (a-8). The Applicants maintain their traversal of the further restriction requiring a species election.

The restriction of Markush-type claims is governed by MPEP 803.02. “[I]t is improper for the Office to refuse to examine that which applicants regards as their invention, unless the subject matter in a claim lacks unity of invention. Broadly, unity of invention exists where compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature essential to that utility.” MPEP 803.02. The Applicants assert that the claims fulfill the requirements for unity of invention.

Indeed, the Written Opinion of the International Searching Authority identified that unity of invention does exist for the pending claims. Moreover, as indicated in Applicants’ previous response, the Office Action’s assertion that at least one Markush alternative is not novel over WO 00/37461 is erroneous and does not support lack of unity. Withdrawal of the requirement for further restriction is respectfully requested.

Rejection under 35 U.S.C. 103

Claims 1-6 and 10 stand rejected under 35 U.S.C. 103 as allegedly obvious over U.S. 6,544,997 (Bosmans) in view of (U.S. 4,186,135). The Applicants disagree and request reconsideration and withdrawal of the rejection.

The present invention requires that R³ is C₁₋₆alkyl, C₁₋₆alkyloxy, or halo. In contrast, the comparable position in Bosmans is limited to hydrogen. Nothing in Bosmans, the cited art, or the knowledge of those skilled in the art, suggests that the hydrogen of Bosmans can be modified with C₁₋₆alkyl, C₁₋₆alkyloxy, or halo.

Moreover, the claimed compounds have unexpected properties over those of Bosmans. As set forth at pages 52-54, the claimed compounds show improved metabolic stability to those of Bosmans.

The citation of Thominet does not cure the deficiencies of Bosmans. As the cited art, either alone or in any allowable combination, fails to teach or suggest the claimed compounds that have improved metabolic stability, a *prima facie* case of obviousness has not been established. Withdrawal of the rejection is requested.

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The Applicants assert that claims 1-6 and 10 are allowable over the cited art. An early Notice to that effect is earnestly solicited. Upon an indication of the allowability of any of the product claims, rejoinder of all method claims requiring all the limitations of the allowable product claim is requested. MPEP 821.04.

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/Stephanie A. Barbosa/
Stephanie A. Barbosa
Registration No. 51,430

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439